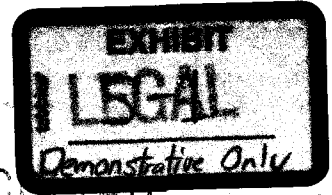




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MEMORANDUM



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31EX

2002 MAY -1 P 2:49

AZ CORP COMMISSION  
DOCUMENT CONTROL

TO: Docket Control  
Arizona Corporation Commission

FROM: Ernest G. Johnson *MD/fm*  
Director  
Utilities Division

Date: May 1, 2002

RE: STRAWBERRY WATER COMPANY, INC. - APPLICATION FOR AN  
EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY  
TO PROVIDE WATER SERVICE IN GILA COUNTY, ARIZONA (DOCKET  
NO. W-03513A-01-0727)

Attached is the Staff Report for the above referenced application. Staff is recommending approval of the application following a hearing.

EGJ:JEF:jbc

Originator: Jim Fisher

Attachment: Original and Eleven Copies

Arizona Corporation Commission

**DOCKETED**

JUN - 2 2004

DOCKETED BY	<i>CAH</i>
-------------	------------

Service List for: Strawberry Water Company  
Docket No. W-03513A-01-0727

Robert Hardcastle  
Brooke Utilities, Inc.  
Post Office Box 82218  
Bakersfield, California 93380

Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

STRAWBERRY WATER COMPANY  
DOCKET NO. W-03513A-01-0727

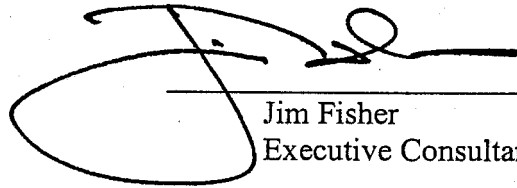
APPLICATION FOR AN EXTENSION OF CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER SERVICE IN GILA COUNTY, ARIZONA

April 2002

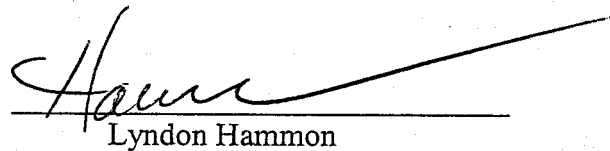
## STAFF ACKNOWLEDGEMENT

The Staff Report for Strawberry Water Company, Docket No. W-03513A-01-0747 was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analyses of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis.

Contributing Staff:



Jim Fisher  
Executive Consultant II



Lyndon Hammon

**EXECUTIVE SUMMARY  
STRAWBERRY WATER COMPANY  
DOCKET NO. W-035113A-01-0727**

Strawberry Water Company ("Strawberry") is an Arizona corporation engaged in providing water utility service to approximately 983 customers within portions of Gila County, Arizona. Strawberry is owned by E&R Water Company, Inc. ("E&R"). E&R is a wholly-owned subsidiary of Brooke Utilities, Inc. ("Brooke") of Bakersfield, California.

Strawberry is requesting Arizona Corporation Commission ("ACC") authorization to extend its current Certificate of Convenience and Necessity ("CC&N") to include the Hardscrabble Mesa Subdivision ("HMS"). HMS is outside of, and non-contiguous to the Strawberry Water Company CC&N. Prior management of Strawberry began providing service to HMS, without ACC authorization. Strawberry has filed this application in compliance with Decision No. 62400.

Staff recommends approval of the CC&N extension request subject to Strawberry complying with the following conditions:

1. Enter into a main extension agreement to convey the existing water distribution facilities.
2. Charge its authorized rates and charges in the extension area.

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Proposed Rates.....	2
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## EXHIBITS

Area Map .....	Attachment A
Legal Description.....	Attachment B

### **Introduction**

On September 13, 2001, Strawberry Water Company, Inc. ("Strawberry"), an Arizona corporation, filed an application with the Arizona Corporation Commission ("ACC") requesting approval for an extension of its existing Certificate of Convenience and Necessity ("CC&N") in Gila County, Arizona, to include the Hardscrabble Homeowners Association.

On October 2, 2001, Staff notified Strawberry its application was not sufficient according to the Arizona Administrative Code. On February 20, 2002, Strawberry provided Staff with additional information.

### **Background**

Strawberry is an Arizona corporation engaged in providing water utility service to approximately 983 customers within portions of Gila County, Arizona. Strawberry is owned by E&R Water Company, Inc. ("E&R"), which obtained Strawberry's CC&N in Decision No. 30820, (March 20, 1958). E&R is a wholly-owned subsidiary of Brooke Utilities, Inc. ("Brooke") of Bakersfield, California.

By this application, Strawberry is seeking to extend its current CC&N to include the Hardscrabble Mesa Subdivision ("HMS"). HMS is outside of, and non-contiguous to the Strawberry CC&N. Strawberry projects that 9 additional customers will be served in the first year, and that a total of 18 customers will be served in the proposed extension.

On March 31, 2000, in Decision No. 62400, the ACC authorized higher rates for E&R. During review of the E&R rate case, Utilities Division Staff learned that E&R was providing service and charging the unauthorized fee to the HMS. According to Company management, previous management of E&R Water entered into a service agreement with HMS, which required each HMS customer to pay an additional \$20 per month for a service interconnection with Strawberry to the HMS distribution system. Strawberry has provided representations to Staff that the Company stopped billing HMS customers the unauthorized rates concurrent with Decision No. 62400.

In Decision No. 62400, Strawberry was required to extend its CC&N to include the HMS area. On March 21, 2000, Richard Henry, President of the Hardscrabble Homeowners Association ("HHA") informed Brooke Utilities, Inc., of HHA's desire to convey all interest and ownership in its water distribution system to Brooke. On September 6, 2001, Richard Henry further informed Mr. Hardcastle, of Brooke Utilities, Inc., that the HHA agreed to limit future installations to a maximum of ten additional residential meters.

To date, the parties have not entered into a main extension agreement to convey the water distribution plant owned by the HHA to Strawberry. Staff recommends that Strawberry be required to enter into and obtain approval of a main extension agreement with HHA as a condition of approval for the required CC&N extension.

### **Water Production Capacity**

Strawberry has 13 wells with a total production capacity of 289 gallons per minute, with 252,500 gallons of storage capacity, booster pumps, pressure tanks, and a distribution system serving 983 connections.

Based on historical growth rates (2 - 3 percent per year), it is anticipated that the existing service area would have about 1,100 total customers at the end of five years. The Company has predicted an additional 9 customers for the proposed CC&N extension, at the end of five years. The existing production and storage can serve 1,248 connections. Therefore, Engineering concludes that the existing system has adequate production and storage capacity to serve the existing and proposed CC&N area within a conventional five year planning period, without adding any new production.

### **Arizona Department of Environmental Quality ("ADEQ") Compliance**

ADEQ regulates the water system under ADEQ Public Water System I.D. #04-006. ADEQ has determined that this system is currently delivering water that meets water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

### **Arizona Department of Water Resources ("ADWR") Compliance**

Strawberry is not within any Active Management Area, and consequently is not subject to reporting and conservation rules.

### **ACC Compliance**

A check with the Utilities Division Compliance Section showed no outstanding compliance issues.

### **Proposed Rates**

Strawberry has proposed to extend service to the property at its tariffed rates.

### **Recommendations**

Staff recommends that the Commission grant Strawberry Water Company application for an Extension to its Certificate of Convenience and Necessity to provide water service, subject to compliance with the following conditions:

Staff recommends that the Commission require Strawberry Water Company to charge its existing rates and charges in the proposed extension area.

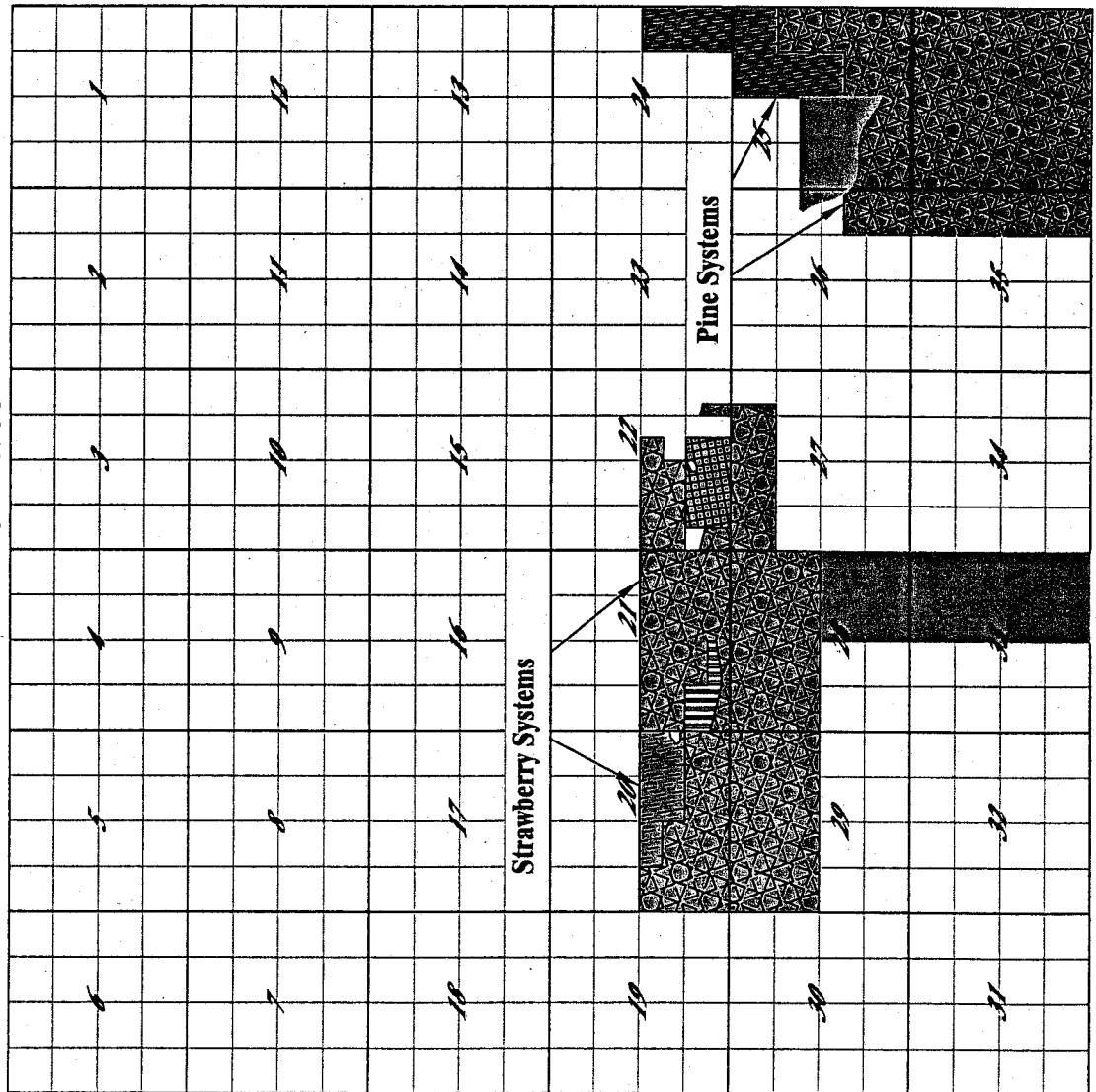
Staff recommends that the Commission require Strawberry Water Company to enter into a main extension agreement with the Hardscrabble Homeowners Association consistent with Commission rules, to convey the water distribution property to the utility, within 60 days of any decision in this matter.




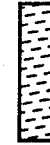




Staff further recommends that the Commission's Decision granting this Extension to a Certificate of Convenience and Necessity to Strawberry Water Company be considered null and void without further order from the Commission should Strawberry Water Company, fail to meet any of the above conditions within the time specified.

# COCONINO COUNTY Gila

## RANGE 8 East

## TOWNSHIP 12 North

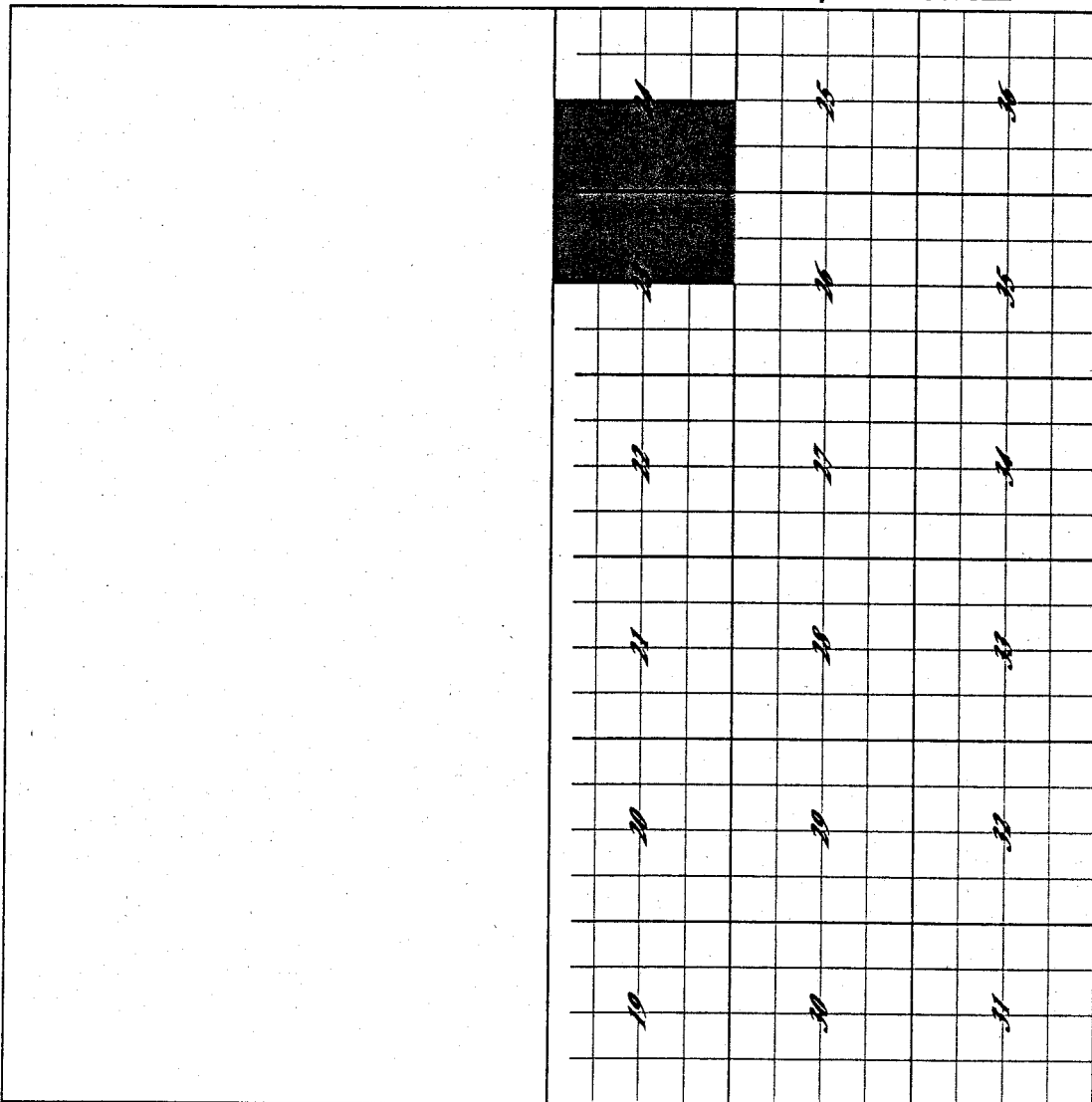


-  W-1576 (3)  
E & R Water Company, Inc.
-  W-1407 (1)  
Strawberry Water Company
-  W-1993 (12)(1)  
United Utilities (Strawberry)
-  W-2137 (2)  
Williamson Waterworks, Inc.
-  Pine Creek Canyon Domestic Water  
Improvement District (Nonjurisdictional)
-  E & R Water Company, Inc.  
United Utilities, Inc.  
Williamson Waterworks, Inc.  
Application to Transfer to  
Strawberry Water Company, Inc.  
Docket No. W-3513-98-080
-  E & R Water Company, Inc.  
Williamson Waterworks, Inc.  
Application to Transfer to  
Pine Water Company, Inc.  
Docket No. W-3512-98-079
-  Strawberry Water Company, Inc.  
W-3513-01-727  
Application for Extension

**COU****NTY** *Gila*

**RANGE 8 East**

**TOWNSHIP 11 1/2 North**



Strawberry Water Company, Inc.  
W-3513-01-727  
Application for Extension

TRAWBERRY WATER COMPA  
DOCKET NO. W-3513-01-727  
AMENDED LEGAL DESCRIPTION

ATTACHMENT B

The SE 1/4 of Section 28 and the E 1/2 of Section 33, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

The E 1/2 of Section 23 and the W 1/2 of Section 24, Township 11-1/2 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

RECEIVED

Water Facilities Agreement

W-03513A-01-0727

2003 MAR -3 A 11: 37  
AZ CORP. COMMISSION  
DOCUMENT CONTROL  
This Water Facilities Agreement ("Agreement") entered into this 15<sup>th</sup> day of December 2002, by and between Brooke Utilities, Inc. ("Brooke") with primary business offices located at 3101 State Rd., Bakersfield, California 93308 and Mesa Homeowners Association ("Applicant") with its principal mailing address at 1501 E. Granite Dells Rd., Payson, Arizona 85541 (hereafter collectively referred to as the "Parties"). The Parties contemplate the conveyance of existing water utility infrastructure and facilities for the purpose of Strawberry Water Co., Inc. providing domestic water utility service to the Applicant. For the purposes of this Agreement all further references made herein to the conveyed water utility system are referred to as "the Improvements".

Section I: Recitals

1. WHEREAS, Brooke is a properly organized Arizona corporation in good standing with corporate offices at that location first set forth above; and,

WHEREAS, Brooke, as of the date of this Memorandum, is the exclusive owner of United Utilities, Inc. ("UU"), E&R Water Company, Inc. ("E&R"), Williamson Waterworks, Inc. ("WWW"), C&S Water Company, Inc. ("C&S"), Pine Water Co., Inc. ("Pine Water"), Strawberry Water Co., Inc. ("Strawberry Water"), and Payson Water Co., Inc. ("Payson Water"), all of which are Arizona corporations in good standing operating in Gila and Pinal Counties, Arizona; and, Brooke Water L.L.C. ("BWLLC"), and Circle City Water Co., L.L.C. ("CCWCo."), Arizona organized limited liability companies in good standing operating in La Paz and Maricopa Counties, Arizona respectively; and, High Desert Water Company, Inc. ("HDWCo."), Pine-Oak Water Company, Inc. ("P-O"), Desert Utilities, Inc. ("DUI"), and Navajo Water Co., Inc. ("Navajo Water") all Arizona corporations in good standing operating in Navajo County, Arizona; and, all of Brooke's water companies are hereafter collectively referred to as "Water Subsidiaries"; and

3. WHEREAS, Water Subsidiaries operate individual water systems ("Water Systems") pursuant to various regulatory authorities in areas determined by the valid issuance, from the Arizona Corporation Commission ("ACC"), of Certificates of Convenience and Necessity ("CC&N") throughout all of the aforementioned Arizona counties and presently serving approximately eight thousand domestic residential and commercial water customers; and,
4. WHEREAS, Water Subsidiaries are considered public service corporations within the meaning of Article XV of the Arizona Constitution, Arizona Revised Statutes ("A.R.S.") § 40-202 et. seq. and Arizona Administrative Code ("AAC") § 14-2-406 and are, therefore, subject to the various joint and several jurisdictions of ACC, Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources ("ADWR") and other regulatory authorities, not expressly described

by this section, which may have jurisdiction over the operations of the Water Subsidiaries and are hereafter collectively referred to as "Regulatory Authorities"; and,

5. WHEREAS, Brooke desires to maintain the exclusive right to assign the benefits and delegate the duties under this Agreement, and subject to the conditions of this Agreement, as it relates to the creation of any third party beneficiaries, to any of its Water Subsidiaries as an assignee of such benefits or delegate of such duties; and,
7. WHEREAS, Brooke anticipation assignment of this Agreement and the benefits, duties, and obligations hereunder to Strawberry Water Co., Inc.; and,
8. WHEREAS, any assignment of the benefits or delegation of the duties of this Agreement by Brooke to any of the Water Subsidiaries may be subject to the advance review, consideration and approval (the "Regulatory Approval Process") by applicable regulatory authorities. In any instance where the Regulatory Approval Process is required, a condition precedent to the effectiveness of this Agreement is created. Therefore, this Agreement shall not become wholly effective nor serve as an obligation of the Parties to perform any of the duties hereunder, except as otherwise may be provided herein, until the Regulatory Approval Process is completed in the form and substance of this Agreement; and,
9. WHEREAS, Applicant is a private party or developer requesting the Improvements within the CC&N of one of the Water Subsidiaries and is more fully described in Exhibit I attached hereto; and,
10. WHEREAS, Applicant has fully considered the construction and development of a private water source exclusively serving its personal requirements and has declined development of same; and,
11. WHEREAS, Applicant has requested, pursuant to its Request for Service letter dated March 21, 2000, that Water Subsidiaries provide potable domestic water service to the Improvements; and,
12. WHEREAS, Brooke has accepted Applicants request to provide potable domestic water service to the Improvements; and,
13. WHEREAS, Water Subsidiaries do not presently operate a water distribution system able to serve potable domestic water to the Improvements without contemplation of this Agreement; and
14. WHEREAS, that AAC statute referenced above permits Brooke or Water Subsidiaries to require Applicant to contribute funds funding necessary to construct Improvements.

NOW, THEREFORE BE IT RESOLVED the Parties to this Agreement do hereby agree as follows:

**Section II: Utility Plant Additions, Cost, Payment, Cost Revisions and Developer Cancellation**

1. Brooke will construct, or cause to be constructed, the Improvements sufficient to fully satisfy Applicant's requirements for water utility service as further described by this Agreement.
2. The reconstructed value of the Improvements, more fully described by Exhibit III attached hereto and incorporated herein by reference for all purposes, is One Hundred Eleven Thousand Sixty Dollars and No Cents (\$111,060). This amount shall hereafter be referred to as the "Improvements Cost".
3. All funds payable pursuant to this Agreement, including any adjustments thereto, shall be paid by Applicant to Brooke in the form of certified cashiers check or personal check the validity of which shall be determined only after satisfaction of same by the financial institution upon which it is drawn.
4. In addition to the Improvements Cost, Applicant shall additionally pay to Brooke, if applicable, an amount sufficient to pay for engineering services required by Brooke, in connection with the Improvements, in that amount indicated by Exhibit III attached hereto. At Brooke's expressed option, Applicant may contract, arrange and subscribe to those engineering services described by this section directly with a licensed provider of same subject to Brooke's prior approval of such provider. In every case, the provider of engineering services shall be responsible for providing complete "as built" drawings and related documents more fully describing the Improvements.
5. The complete cost of any revisions and change orders, as provided by this Agreement, shall be payable by Applicant, in a form consistent with Agreement, within five (5) days of Brooke's written notification to Applicant of the necessity of such revisions and change orders as exclusively determined by Brooke.
6. If, for any reason, any balance remains unpaid by Applicant, Brooke shall be paid by Applicant prior to Brooke's final connection of its utility plant to Applicants point of service of the Improvements. **APPLICANT ACKNOWLEDGES AND AGREES THAT IT IS THE EXPRESSED PURPOSE OF THIS SECTION NOT TO PERMIT APPLICANT'S CONNECTION TO BROOKE'S UTILITY PLANT PRIOR TO ALL AMOUNTS BEING FULLY PAID WHICH WERE INCURRED IN CONNECTION WITH THIS AGREEMENT.**
7. If Applicant does not make all payments to Brooke in accordance with this Agreement, Brooke may, at its sole and exclusive option, and without advance notice to Applicant, immediately cease construction of any or all portions of Improvements

until the entire balance currently owing, as indicated by Exhibit III attached hereto, is received by Brooke. Any other costs incurred by Brooke or its agents, contractors, or representatives due to cessation of the Improvements contemplated by this Agreement, including re-mobilization or other related or unrelated costs, shall be paid to Brooke by Applicant prior to Brooke's resumption of the construction of the Improvements.

### **Section III: Conditions of Improvements Costs**

1. The Improvements Costs referenced in Exhibit III are further conditioned upon Applicant's acceptance of each of the following conditions:
  - a) That, in perpetuity, Applicant be allowed connection of not more than twenty (20) water service connections to the property described in Exhibit I.
  - b) That prior to the commencement of construction of Improvements all permits, approvals, licenses and easements required in connection with Improvements shall be obtained, recorded, transferred or otherwise developed in favor of Brooke so as to completely satisfy all authorities having jurisdiction over regulation or approval of Improvements.
  - c) That all easements and rights-of-way shall be free of obstacles which may interfere with construction or subsequent operation of Improvements contemplated by this Agreement, as exclusively determined by Brooke. If Improvements require road, pavement and/or concrete construction, all such development shall be constructed at grade elevations. No pavement or curbs shall be installed prior to completion of Improvements contemplated by this Agreement or otherwise approved in advance of construction by Brooke. If any streets, roads, alleys, or drainage ways are not constructed in accordance with this section, Applicant shall bear all costs of every type and description, on a non-refundable basis, that are incurred by Brooke to relocate Improvements as a result of said facilities not being constructed in accordance with this section.
  - d) That no engineering changes be made, caused, required or incurred by Applicant in connection with any utility construction standards, the Regulatory Authorities or any State or County health department, or any other public agency under whose jurisdiction the construction of the Improvements may be deemed appropriate without the advance written approval of Brooke.
  - e) That, prior to the actual construction of Improvements, Brooke has received responsive bids for the material, labor and related services otherwise referenced in this Agreement and required to construct Improvements.

- f) That no changes to the Improvements, which in any manner affect the Improvements contemplated by this Agreement, be made by Applicant or any agent or representative of Applicant without first determining any cost impact to Brooke. In the event any cost impact is determined by Brooke to exist, further construction of the Improvements, contemplated by Agreement, shall immediately be ceased until Applicant has further advanced funds to Brooke necessary for the cost of the changed work.
- g) That Applicant comply with any additional terms and conditions as may be set forth in other sections of this Agreement which may be attached hereto and incorporated by reference for all purposes.

#### **Section IV: Improvements Costs Revisions, Applicant Cancellation**

1. In the event any of the terms or conditions of this Agreement are not completely performed which impact Improvements Costs, as exclusively determined by Brooke, Brooke reserves the right to revise those amounts indicated in Exhibit III. Additional funds will be required to be advanced by Applicant to Brooke, (a) prior to the resumption of construction of Improvements, or (b) any portions of the Improvements not expressly described by Exhibit III. If Applicant determines that Brooke's revised cost estimate is not acceptable, Applicant's exclusive recourse shall be, within three (3) days of the receipt of the written revised cost estimate from Brooke, to advise Brooke in writing of Applicant's cancellation of the request for service. Applicants proper notice of cancellation to Brooke, in accordance with this section, shall relieve Applicant from further advance obligations; however, all advances made to Brooke as of the date of notice of cancellation, regardless of whether or not such advances are representative of Improvements Cost actually incurred by Brooke, shall be retained on the books and records of Brooke.

#### **Section V: Service, Brooke Liability Limitations, Applicable Rates**

1. Notwithstanding any reference to fire protection facilities contained in this Agreement, the Improvements are being constructed for the purpose of providing domestic water service to the Improvements. However, under certain operating conditions as exclusively determined by Brooke, those facilities may be used, with the prior written approval of Brooke, to provide limited emergency fire protection service to an official fire protection agency which has previously contracted with Brooke for such service.
2. It is understood by Applicant, as evidenced by the execution of this Agreement, that Brooke does not have the responsibility to provide, and shall not construct under this Agreement, facilities capable of providing any fire flow to the Improvements. Therefore, it is expressly agreed and understood by Applicant that **BROOKE DOES NOT GUARANTEE OR INSURE UNINTERRUPTED OR REGULAR WATER SERVICE; NOR DOES BROOKE REPRESENT THE**

**AVAILABILITY OF ADEQUATE PRESSURE, VOLUME OR FIRE FLOW FROM THE SYSTEM BY OFFERING DOMESTIC WATER SERVICE PURSUANT TO THIS AGREEMENT.<sup>1</sup>**

3. It is agreed that in the event of service from a fire hydrant or an interior fire sprinkler system which is used for non-fire protection purposes, or is interrupted or is irregular or defective or fails from causes beyond Brooke's control or through negligence or alleged negligence of its employees, services, agents or other representatives, Brooke shall not be liable for any injuries or damages arising therefrom. Further, Brooke shall have neither the responsibility nor the liability for any use or disposition of fire hydrant or fire protection water, even if such use or disposition is attributable, or is alleged to be attributable to the negligence of Brooke's employees, agents, servants, or other representatives. Applicant, or any other person or entity which succeeds to Applicant's interest, REGARDLESS OF WHETHER SUCH PERSON OR ENTITY HAS KNOWLEDGE OR NOTICE OF THESE TERMS, shall make no claim against Brooke for any such loss or damage resulting from services provided under this Agreement or the applicable service tariff. Brooke shall be entitled to recover its reasonable attorney's fees should Applicant fail to properly comply with this provision.

**Section VI: Rates and Tariffs**

1. It is understood and agreed by Applicant, as evidenced by its execution of this Agreement, that all charges for domestic water services to Improvements shall, at all times, be at the currently applicable tariffs of Water Subsidiaries as established by ACC. Water Subsidiaries tariffs are subject to change from time to time upon application by Brooke and as approved by the Commission.

**Section VII: Permits and Licenses, Easements, Title**

1. Brooke and Applicant agree to obtain all permits and licenses from all authorities having jurisdiction which may be required for the construction of Improvements contemplated under this Agreement.
2. Prior to the commencement of construction, Applicant shall, if applicable, obtain from the owners of the property upon which the Improvements is to be constructed, a perpetual private water utility easement for construction, operation and maintenance of Improvements on the behalf of, and in the name of, Brooke and in a form acceptable to Brooke.
3. All materials, facilities constructed, and water supply equipment provided in connection with construction of Improvements under this Agreement and the completed facilities as installed shall become the sole and exclusive property of

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<sup>1</sup> Please also see Section X: General Conditions, paragraph number 16.

Brooke or its assignee or transferee, and full legal and equitable title thereto shall be completely and fully vested in Brooke, free and clear of any liens, without the additional requirement of any written document of transfer or recordation to or by Brooke other than this Agreement. Applicant agrees to execute or caused to be executed promptly all such documents as Brooke or its representatives may request to evidence good and merchantable title to said facilities free and clear of all liens.

### **Section VIII: Performance, Time of Completion**

1. Brooke or its agent, contractor, or designee shall commence construction of Improvements contemplated by this Agreement within thirty (30) days following execution of this Agreement subject to satisfaction of the regulatory requirements described herein. Completion of the contemplated Improvements is expected in not more than one hundred and eighty (180) days from the commencement of construction. The estimated construction schedule is conditioned upon Applicants performance of all conditions hereunder and Brooke encountering no extraordinary or unanticipated construction conditions. It is mutually understood that these commencement and completion dates are estimates only and no liability shall arise from Brooke's failure to complete the Improvements, in whole or part, in accordance with these estimated dates.

### **Section IX: Advance Amount, Refund, Transfer**

1. As described by this Agreement, all contributions shall be made by Applicant as specified hereunder. If the actual Improvements Costs are revised, in accordance with this Agreement, the additional contribution shall be applied thereto and/or adjusted by the same amount.
2. Subject to Appendix 1, attached hereto, the Improvements Costs do not include any amount necessary for the payment of State or federal income taxes in connection therewith.
3. In addition to Improvements Costs all contributions made hereunder by Applicant shall include an amount equal to ten and four/tenths percent (10.4%) of the sum of all amounts contributed, or to be contributed, by Applicant in accordance with this Agreement. This additional amount shall be to reimburse Brooke's for its pecuniary costs incurred in the management, supervision and inspection of Improvements.
4. Notwithstanding A.A.C. § R14-2-406 (D) Applicant waives and forever relinquishes any claim or right to refunds of amounts contributed under this Agreement which may otherwise be applicable to advances in aid of construction. Further, upon Applicant's execution of this Agreement, as evidenced below, Brooke, or it's Water Subsidiaries shall have no responsibility whatsoever to make refunds to Applicants under this Agreement.

5. Applicant understands, acknowledges and agrees, as evidenced by its execution of this Agreement, that it is solely responsible to notify Brooke of any change of address used in connection with any provision hereunder. All changes of address of Applicant should be forwarded in writing to Brooke's offices as first set forth above.
6. In the event of the sale, conveyance or transfer by Brooke, pursuant to the approval of the Regulatory Authorities, of any portion of its water system, including the facilities serving the Improvements and installed pursuant to the terms of this Agreement, Brooke's obligations under this Agreement shall cease (except to any payment which may be then due) conditioned upon the transferee assuming, and agreeing to pay Applicant, any sums payable to Applicant thereafter in accordance with any provisions of this Agreement.

### **Section X: General Conditions**

1. Before this Agreement shall become effective and binding upon either Brooke, its Water Subsidiaries or Applicant, it must be approved by ACC. This Agreement may also be subject to the review and approval of ADEQ which may issue a Certificate of Approval to Construct prior to the beginning of any construction. In the event this Agreement is not so approved, this Agreement shall be null and void and of no force or effect whatsoever. This Agreement may not be modified or amended except by a writing signed by both parties. This Agreement constitutes the entire Agreement and understanding between the parties, with respect to the subject matter hereof, and expressly supersedes and revokes all prior or contemporaneous promises or representations of any nature whatsoever. The remedies provided for in this Agreement shall not be deemed Brooke's exclusive remedies but shall be in addition all other remedies available to Brooke at law or equity. No waiver by Brooke of any breach by Applicant of any provision of this Agreement shall in any way be construed as a waiver of any future or subsequent breach by Applicant or bar the right of Brooke to insist on strict performance by Applicant of the provisions in this Agreement in the future. Applicant is an independent party and not an agent or employee of Brooke. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the parties hereto and their respective heirs, assigns, and successors.
2. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and representatives; provided, however, that no assignment or transfer of any of the obligations, powers, duties or rights created in the obligee or assignee by this Agreement shall be binding upon any of the Parties to this Agreement until such assignment or transfer is approved in writing by each of the Parties hereto.
3. Attorneys' Fees: If any suit or other action or proceeding is brought to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonably attorneys' fees and costs, such amounts as may be established by a court and not a jury.

4. Entire Agreement: This Agreement embodies the entire agreement between the Parties and supersedes all prior and contemporaneous oral or written agreements, representations and understandings, if any, relating to the subject matter hereof which shall hereby be superseded and merged. All documents attached to this Agreement shall be read and interpreted as consistent with one another.
5. Headings: Section headings are for the convenience of reference only and shall in no way affect the interpretation of this Agreement. This Agreement is the result of good faith negotiations between the Parties and, accordingly, shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof.
6. Third Party Beneficiaries: Applicant does not intend the benefits of this Agreement to inure to any third party, nor shall this Agreement be construed to make or render Brooke liable to any creditor, materialman, supplier, tax collector, contractor, subcontractor, broker, purchaser or lessee of the Improvements. Brooke may, at its option, create a third party beneficiary by means of its assignment or transfer of this Agreement to Water Subsidiaries.
7. Further Assurances: Each Party shall execute and deliver all such documents and perform all such acts as reasonably requested by any party from time to time to perform the duties and obligations contemplated by this Agreement.
8. Incorporation of Exhibits: All annexes, schedules and exhibits attached hereto are hereby incorporated into this Agreement by each reference thereto as if fully set forth at each reference.
9. Authority: Each Party acknowledges and warrants that it is fully authorized and empowered to execute this Agreement by and through the individuals executing below.
10. Notices: Any notices or communication required or permitted to be given to any of the Parties to this Agreement must be in writing and shall be effective upon the earlier of (a) the date when received by such party, or (b) the date which is three (3) days after mailing, postage prepaid, by certified or registered mail, return receipt requested, to the address of such party as indicated below, or (c) by telefacsimile delivered or transmitted to the party to whom such notice is required or directed in accordance with that information first set forth above. Any such notices to be personally delivered may be delivered to the principal offices or location of the other party to whom such notice is directed. Any such notice shall be deemed to have been given (whether actually received or not) on the day it is personally delivered as aforesaid. Any party to this Agreement may change its address or delivery location by giving notice to the other party pursuant to this section.

11. Time of Essence: Time is of the essence with regard to each provision of this Agreement as to which time is a factor. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a nonbusiness day (i.e. Saturday, Sunday or legal holiday recognized by the State of Arizona), such time period or performance deadline shall be extended to the next business day.
12. Preparation of Documents: Brooke has prepared this Agreement. Applicant and, at its option, its counsel acknowledge the opportunity to review this document. Accordingly, the Agreement shall not be construed against Brooke or its Water Subsidiaries because the Agreement was drafted by Brooke.
13. Arizona Law: This Agreement has been prepared, is being executed and delivered, and is intended to be performed in the State of Arizona. The substantive laws of the State of Arizona and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement and interpretation of this Agreement and all documents related hereto without regard to conflict of the law rules.
14. Cooperation of Parties: The Parties hereto agree to do all such things and take all such action, and to make, execute and deliver such documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
15. Counterparts: This Agreement may be executed in multiple counterparts, each of which, when so executed shall be deemed an original but all such counterparts shall constitute but one and the same Agreement.
16. Brooke's Liability Limitations: Applicant or developer acknowledges that the facilities are being conveyed for the purpose of providing domestic water service to the property described in Exhibit I. Under certain operating conditions, the facilities may provide limited fire protection service to appropriate fire protection agencies contracting with the Brooke for such service. However, it is expressly understood by Brooke and the Applicant that Brooke, through its Water Subsidiaries, will provide a minimum delivery pressure of 20 pound per square inch at the customer's meter or point of delivery in accordance with A.A.C. R14-2-407.E, but that Brooke does not represent or warrant regular fire protection service. Applicant further acknowledges that Brooke does not represent or warrant that the domestic water utility service provided by Brooke meets any rules, regulations or other standards for fire protection imposed by any governmental entity; nor does Brooke accept or assume any obligation of Applicant, whether express or implied, pertaining to the property described in Exhibit I including, without limitation, assurances of water for fire protection purposes, except as expressly set forth in this Agreement.

17. Joint and Several Liability: Applicant, if actually defined to represent more than a single individual, shall be jointly and severally liable for all duties and obligations under this Agreement.

**Section XI: Acceptance**

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

For: Applicant

By:

*Robin Kat Chandler*  
VICE PRES.  
*John Curdell*  
Sec/Treasurer

For: Brooke Utilities, Inc.

By:

Its:

For: Strawberry Water Co., Inc.

By:

Its:

*Richard E. Henry*  
*Richard E. Henry, P.O.A.*

Richard E. Henry, President  
Hardscrabble Mesa Homeowners  
Association

*Robert T. Hardcastle*  
Robert T. Hardcastle  
President

*Robert T. Hardcastle*  
Robert T. Hardcastle  
President

## **Exhibit I**

### **Vicinity Map and Legal Description**

#### **Vicinity Map:**

See attached graphical description provided by ACC.

#### **Legal Description:**

The SE  $\frac{1}{4}$  of Section 28 and and E  $\frac{1}{2}$  of Section 33, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

The E  $\frac{1}{2}$  of Section 23 and the West  $\frac{1}{2}$  of Section 24, Township 11-1/2 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

# MEMORANDUM

TO: Jim Fisher  
Executive Consultant II  
Utilities Division

FROM: Barb Wells  
Engineering Plans Technician  
Utilities Division

THRU: Del Smith  
Engineering Supervisor  
Utilities Division

DATE: October 2, 2001

RE: **STRAWBERRY WATER COMPANY, INC. (DOCKET NO. W-3513-01-727)**

The area requested by Strawberry for an extension has been plotted using the amended legal description that I retyped from the application to avoid confusion. This legal description is attached and should be used in place of the original description submitted with the application. Strawberry is responsible for making sure this legal description is docketed as an amendment to their application.

Attached are copies of the maps for your files.

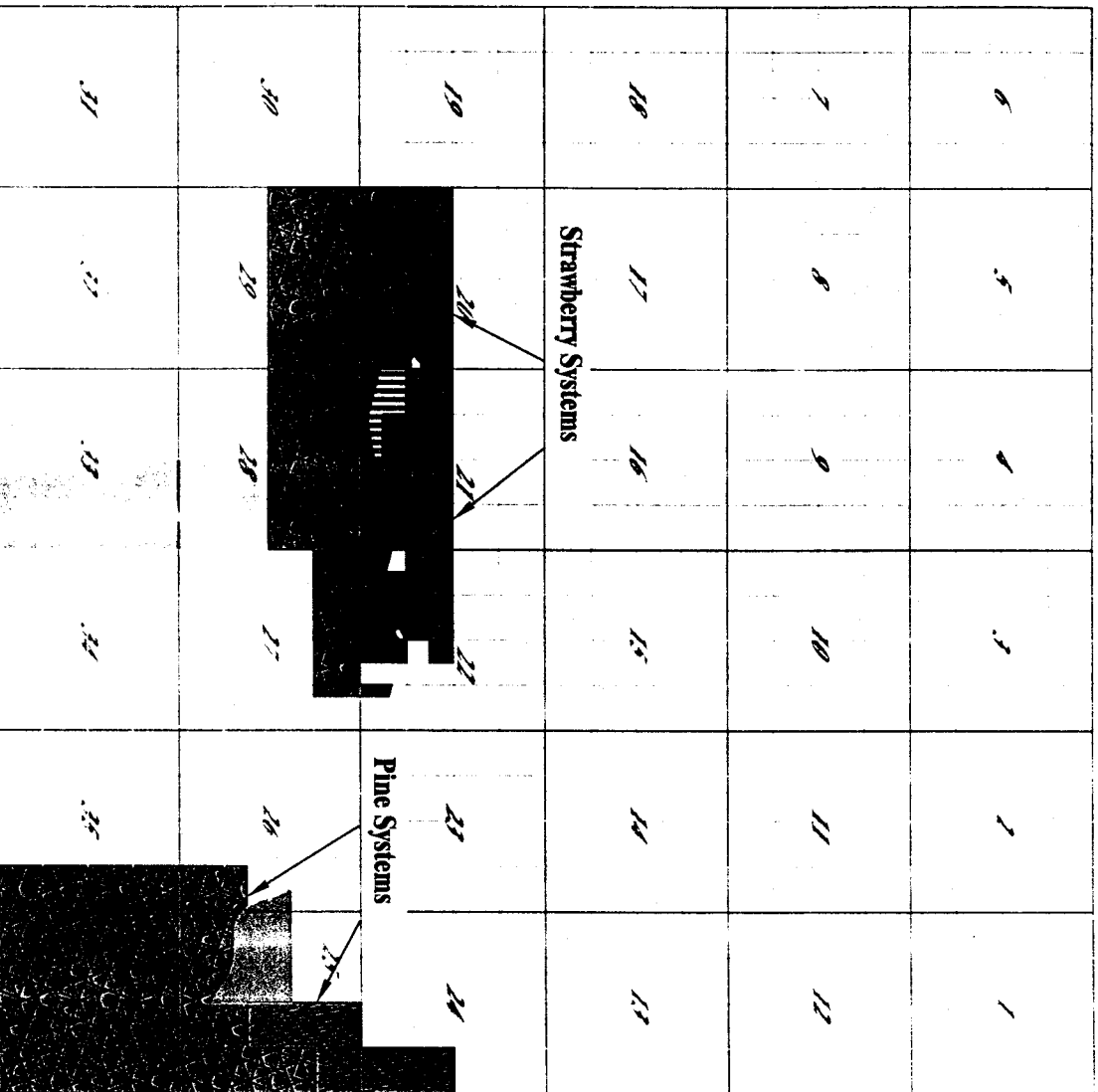
:bsw

Attachments

cc: Docket Control  
Mr. Robert Hardcastle  
Ms. Debbi Person  
File

# COUNTY: Gila

## RANGE 8 East



## TOWNSHIP 12 North



W-1576 (3)

E & R Water Company, Inc.



W-1407 (1)

Strawberry Water Company



W-1993 (12)(1)

United Utilities (Strawberry)



W-2137 (2)

Williamson Waterworks, Inc.



Pine Creek Canyon Domestic Water  
Improvement District (Nonjurisdictional)



E & R Water Company, Inc.  
United Utilities, Inc.

Williamson Waterworks, Inc.

Application to Transfer to  
Strawberry Water Company, Inc.  
Docket No. W-3513-98-080



E & R Water Company, Inc.  
Williamson Waterworks, Inc.

Application to Transfer to  
Pine Water Company, Inc.  
Docket No. W-3-12-95-079

# COUNTY: Gila

## RANGE 8 East

19	20	21	22	23	24
20	21	22	23	24	25
21	22	23	24	25	26
22	23	24	25	26	27
23	24	25	26	27	28
24	25	26	27	28	29
25	26	27	28	29	30
26	27	28	29	30	31

## TOWNSHIP 11 1/2 North

Submitted to  
 WASH DC  
 Approved

STRAWBERRY WATER COMPANY  
DOCKET NO. W-3513-01-727  
AMENDED LEGAL DESCRIPTION

The SE 1/4 of Section 28 and the E 1/2 of Section 33, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

The E 1/2 of Section 23 and the W 1/2 of Section 24, Township 11-1/2 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

## **Exhibit II**

### **Other Pertinent Documents**

#### **Table of Contents of Attached Pertinent Documents:**

Not applicable.

## Exhibit III

Page 1

## Cost Estimate Summary

Project Name: Hardscrabble Mesa Homeowners Association  
Project Number: 2000-0216  
Estimate Date: Not applicable

**Non-refundable Contribution in Aid of Construction:**

Development of Hardscrabble Mesa Homeowners Association	\$ 111,060
Engineering	\$ 0
Other	\$ 0
Project Subtotal	\$ 111,060
Plus: BROOKE Management Cost (10.4%)	\$ Not applicable
<u>Total Estimated Improvements Cost</u>	\$ 111,060
Less: <u>Engineering Advance</u> (if applicable)	\$ None
Balance to be Advanced Prior to Construction	\$ 111,060

Materials description is attached.

**NOTWITHSTANDING A.A.C. § R14-2-406 (D) APPLICANT WAIVES AND FOREVER RELINQUISHES ANY CLAIM OR RIGHT TO REFUNDS OF AMOUNTS CONTRIBUTED UNDER THIS AGREEMENT WHICH MAY OTHERWISE BE APPLICABLE TO ADVANCES IN AID OF CONSTRUCTION. FURTHER, UPON APPLICANT'S EXECUTION OF THIS AGREEMENT, AS EVIDENCED BELOW, BROOKE, OR IT'S WATER SUBSIDIARIES SHALL HAVE NO RESPONSIBILITY WHATSOEVER TO MAKE REFUNDS TO APPLICANTS UNDER THIS AGREEMENT.**

Applicant's Initials:

W  
R

## **Exhibit III**

**Page 2**

### **Cost Estimate Detail**

Estimate Cost Details as Appropriate:

Not applicable.

## Description of Water System at Hardscrabble Mesa

3" PVC 2140'

4" PVC 750'

6" PVC 4340'

Storage tank capacity of 5K

Booster pump 3hp

No Pressure Tank

10 Services

\*The above information has been confirmed by Mr. Richard Henry.

## **Exhibit IV**

### **Additional Conditions**

The additional conditions included under this section are fully and completely incorporated into the Agreement as if they were included within specific sections of the Agreement.

1. Applicant does hereby declare and express that the maximum number of customers or users which will be connected to Improvements referenced hereunder shall be one (1) unless otherwise indicated by this section.
2. Applicant does hereby understand, acknowledge, and agree that fire flow demand is **not** included in the Improvements.

## Appendix 1

On August 20, 1996 President Clinton signed into law the Small Business Job Protection Act (H.R. 344) which contained a provision that repealed a portion of the Tax Reform Act of 1986 ("TRA-86") which states that the "gross income of a corporation shall not include any contribution to the capital of the taxpayer". After January 1, 1987, Internal Revenue Code Section 118 treated contributions in aid of construction ("CIAC") as taxable income of electric, gas, water and sewer utility companies. The effect of such provision eliminates the "gross up" of CIAC's which, heretofore, were to be collected in reimbursement of a utility companies taxes payable from the CIAC. Section 1613 (a) of H.R. 3448 returns the IRC Section 118 to its pre-TRA-86 form regarding a utility companies CIAC taxable obligations. In order to satisfy this condition, H.R. 3448 requires certain criteria must be met by utility companies. Brooke Utilities, Inc. and Brooke Water L.L.C. and the Water Subsidiaries anticipate being able to satisfy the applicable criteria. **H.R. 3448 IS RETROACTIVE TO JUNE 12, 1996 FOR ALL CIAC'S.**

H.R. 3448 required the IRS to develop specific regulations regarding this matter which were expected to be drafted during 1997. Additionally, the Arizona Corporation Commission has not, as of the date first set forth above, yet addressed the affect of H.R. 3448 by drafting new regulations which are expected to follow the IRS regulations.

Absent regulatory direction to the contrary, neither Brooke Utilities, Inc. nor Brooke Water L.L.C. expects to collect customer "gross up taxes" after June 12, 1996. This policy is subject to final IRS regulations and Arizona statute revisions.

EXHIBIT

A-1

admitted

/O=JACO OIL COMPANY/OU=JACO.COM/CN=RECIPIENTS/CN=RTH

From: send@mail.efax.com  
Sent: Tuesday, November 18, 2003 8:11 AM  
To: Bob Hardcastle  
Subject: Successful transmission to 16025422129 Re: Hardscrabble Mesa Homeowners Association

Dear Robert Hardcastle,

Re: Hardscrabble Mesa Homeowners Association

The 2 page fax you sent through eFax.com to 16025422129 was successfully transmitted at 2003-11-18 16:11:03 (GMT).

The length of transmission was 46 seconds.

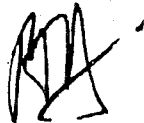
The cost of this transmission was \$ 0.20. Your balance at response time was \$ 3.00.

The receiving machine's fax ID: 6025422129.

If you need additional assistance, please visit our online help center at <http://www.efax.com/help/>. Thank you for using the eFax service.

Best Regards,  
eFax.com

Customer ServiceOnline  
Help: <http://www.efax.com/help/>  
Tel: +1 (323) 817-3205  
Email: [help@mail.efax.com](mailto:help@mail.efax.com)



## Brooke Utilities, Inc.

ROBERT T. HARDCASTLE  
President

P. O. Box 82218  
Bakersfield, CA 93380-2218

Office: (661) 833-7526  
Fax: (781) 823-3070  
E-mail: [rth@brookeutilities.com](mailto:rth@brookeutilities.com)

RECEIVED

2004 JUN - 2 P 3: 54

AZ CORP COMMISSION  
DOCUMENT CONTROL

## Exhibit III

Page 1

### Cost Estimate Summary

Project Name: Hardscrabble Mesa Homeowners Association  
Project Number: 2000-0216  
Estimate Date: Not applicable

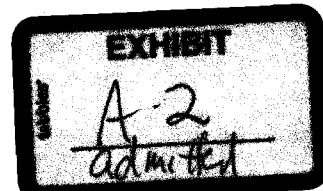
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Less: <u>Engineering Advance</u> (if applicable)	\$ None
<u>Balance to be Advanced Prior to Construction</u>	<u>\$ 111,060</u>

Materials description is attached.

245-7810

FAAS TO Jini Fisher  
C ACC 11/18/03  
C 8:10 am



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4" PVC 750'

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